IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6780 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVRANG DYEING & PRINTING MILLS
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 6780 of 2003
MR AMAR P DAVE for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1
DS AFF.NOT FILED (R) for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 19/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This petition challenges the order-in-original dated 30.11.2000 (Annexure "A") passed by respondent

No.2-Assistant Commissioner of Central Excise & Customs, Division-I, Surat in so far as the respondents have imposed penalty under Rule 96ZQ(5)(ii) of the erstwhile Rules.

2. When this petition has reached final hearing, the learned counsel for the parties state that Special Civil Application No. 164 of 2002 and some cognate matters have already been heard and decided by this Court on 7th March 2002. While making the Rule absolute in the said petition/s, this Court directed the Assessing Officer i.e. the authority who had passed the order-in-original to consider the matters in so far as the penalty was concerned in light of the observations made in the said judgment. This Court held that although the provisions of Clause (ii) of Sub-Rule (5) of Rule 96ZQ of the Central Excise Rules were not required to be declared as ultra vires, the authority was required to be directed to read the Rule in a reasonable manner, that is to say, the penalty stipulated therein is only the maximum amount which could be levied and the assessing authority has the discretion to levy lesser amount depending upon the facts and circumstances of each case. This Court also referred to and followed the decision of the Apex Court in Hindustan Steel Ltd. vs. The State of Orissa, reported in AIR 1970 SC 253, that penalty cannot be imposed merely on account of failure to comply with the procedural provision and this Court referred to the principles laid down by the Apex Court in paragraph 7 of the said decision.

3. We have heard the learned counsel for the petitioners as well as the learned senior standing counsel for the Central Government. There is no dispute about the fact that the controversy raised in the present petition is covered by the principles laid down in the said judgment dated 7th March 2002 of this Court in Special Civil Application No. 164 of 2002 and other cognate matters.

4. We accordingly allow this petition and quash and set aside the impugned order-in-original dated 30.11.2000 (Annexure "A") passed by respondent No.2-Assistant Commissioner of Central Excise & Customs, Division-I, Surat in so far as the order imposes penalty under Rule 96ZQ(5)(ii), and the matter is remanded to respondent No.2. The authorities will be at liberty to pass an appropriate order of penalty in accordance with law in light of the observations made by this Court in the aforesaid judgment dated 7th March 2002 in Special Civil Application No. 164 of 2002 and cognate petitions.

5. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-